

1 STATE OF MINNESOTA IN THE DISTRICT COURT  
2 COUNTY OF BECKER SEVENTH JUDICIAL DISTRICT

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4 Margaret Campbell,  
5 Plaintiff,  
6 vs. Court File 03-CV-19-266  
7 Honor the Earth, MOTION HEARING  
8 Defendant.  
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9 The above-entitled matter came before the Honorable  
10 Gretchen D. Thilmony, Judge of District Court, at the Becker  
11 County Courthouse, Detroit Lakes, Minnesota, on May 8, 2019.

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13 APPEARANCES

14 CHRISTY HALL, Attorney at Law, appeared on behalf of  
15 Plaintiff.

16 FRANK BIBEAU, Attorney at Law, appeared on behalf of  
17 Defendant.

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1 THE COURT: Let's call Margaret Campbell versus  
2 Honor the Earth. This is court file 03-CV-19-266.  
3 Margaret Campbell is represented by Ms. Hall, is that  
4 correct?

5 MS. HALL: Yes, Your Honor.

6 THE COURT: Good morning. Honor the Earth is  
7 represented by Mr. Bibeau. He is here, good morning.

8 MR. BIBEAU: Good morning.

9 THE COURT: We're here for a motion hearing  
10 today based on Mr. Bibeau's filings, a motion to dismiss  
11 for lack of jurisdiction. Is that accurate?

12 MR. BIBEAU: Yes, Your Honor.

13 THE COURT: Okay. Do you want to go ahead?  
14 Whenever you're ready.

15 MR. BIBEAU: Thank you, Your Honor. The matter  
16 that's been filed here is a civil regulatory matter.  
17 It's an employment matter. The White Earth Reservation  
18 has now probably at least 20 years had it's own tribal  
19 court and codes and under federal law now would preempt  
20 state jurisdiction. That decision goes all the way back  
21 to Bryan v. Itasca where the Supreme Court distinguished  
22 out several kinds of remedies that can be used on  
23 reservation and off reservation, although there weren't  
24 tribal courts at the time. So, basically, this matter  
25 could've been filed in tribal court years ago, but for

1       whatever reason it's gone through the Human Rights  
2       Department and now it's here before the District Court.

3               I don't believe there's any jurisdiction for it  
4       here; the jurisdiction lies with the White Earth Tribal  
5       Court north of here.

6               Honor the Earth is based in Callaway, all the  
7       principals involved are all tribal members, and the  
8       conduct occurred within the boundaries of the reservation  
9       of White Earth.

10              So, I understand that the Human Rights Department  
11       did, in their closing statements, say that a person could  
12       file in state court, but they could have said North  
13       Dakota too and it still wouldn't be applicable.

14              THE COURT:   Then, Ms. Hall?

15              MS. HALL:   Yes, good morning, Your Honor.   I  
16       just wanted to start off by acknowledging that the reason  
17       we are here is that my client is alleging that she was  
18       sexually harassed while she was employed by Honor the  
19       Earth and that she raised allegations with, you know, the  
20       appropriate people at Honor the Earth, as well as  
21       allegations of more serious sexual conduct.   She was  
22       ignored.   When she continued to complain, she was put on  
23       an unpaid leave, pretty clearly a retaliatory act.

24              MR. BIBEAU:   Your Honor, I have to object.   I  
25       don't know why we're talking about the factual basis.

1 Underneath we're talking about jurisdiction and the right  
2 to decide. So, what she's talking about is a factual  
3 dispute that you could decide if you decided you had  
4 jurisdiction. So, it's a question of whether it involves  
5 Indians and whether it's on reservation. The conduct  
6 that she's talking about is just allegations and it's  
7 just to sensationalize things. Either the law covers  
8 here or it doesn't and I don't know why we're talking  
9 about these allegations. Again, they've been filed and  
10 they've been answered.

11 THE COURT: I'll note your objection. I'm  
12 going to overrule it because I think that, at least for  
13 purposes of me being able to fully analyze all of this  
14 under Stone, I need to know the allegations to determine  
15 whether -- what the conduct is we're looking at to go  
16 forward. So, with that, go ahead Ms. Hall.

17 MS. HALL: Yes, Your Honor. I do apologize, I  
18 understand that the hearing is not about that, but I do  
19 want to provide the context for why we're here and why  
20 this case is important and why it matters.

21 I think that the jurisdiction question is not even a  
22 close call. There are two separate things that we need  
23 to consider. First of all, who is the entity that's  
24 being sued? And the entity that's being sued here is  
25 clearly a corporation, Honor the Earth. There's some

1 discussion in the filing and in the motion papers about  
2 whether Winona LaDuke herself, who is the founder of  
3 Honor the Earth, is in some sense, you know, the proper  
4 defendant and whether that affects kind of the status of  
5 whether this is in fact a tribal -- sole tribal  
6 jurisdiction matter. But, it's quite clear under the  
7 laws, in the Minnesota Human Rights Act, that the entity  
8 that is sued is the employer.

9 Under the Minnesota Human rights Act it defines  
10 employer and employee and the employer is the person who  
11 is liable when sexual harassment and a hostile work  
12 environment occurs in the workplace. In fact, and I  
13 apologize for not including this in my briefing, as I  
14 noted in my briefing, it wasn't completely clear to me  
15 from the defendant's original submission exactly to what  
16 extent that distinction about who the proper defendant is  
17 was being raised, but it's quite clear from cases from  
18 the Minnesota Supreme Court, including, I think the  
19 leading case here is Rasmussen v. Two Harbors Fish Co.,  
20 and I do have that citation, it is 817 N.W.2d 189 (Minn.  
21 2012). In that case, the plaintiffs again were sexually  
22 harassed in the work place and they sued both the  
23 company, the Two Harbors Fish Company, where they were  
24 sexually harassed, and they sued the owner, Mr. Zapolski  
25 of Two Harbors Fish Company. The Minnesota Supreme Court

1       said no, you can't actually sue the individual owner.  
2       You must sue the corporation. The individual owner is  
3       not liable. So, I think that very clearly establishes  
4       that the correct defendant here is exactly the defendant  
5       that's been named in the complaint and that is Honor the  
6       Earth.

7               While Honor the Earth certainly has some connections  
8       to White Earth, it is a corporation established under the  
9       laws of the State of Minnesota. The laws that regulate  
10      non-profit corporations in the State of Minnesota include  
11      the ability to sue and be sued. There's just no basis  
12      for us saying that we even have parties that are governed  
13      by Public Law 280 when the defendant is a Minnesota  
14      corporation and the plaintiff is not an enrolled tribal  
15      member.

16             Leaving that aside, going on to the PL 280 issue, if  
17      the Court goes that direction and says I think there is  
18      some basis for this to be considered a tribal entity,  
19      even then PL 280 does not definitively make the Minnesota  
20      Human Rights Act a regulatory law. So, under Public Law  
21      280, the Supreme Court of the United States and the  
22      Minnesota Supreme Court have quite clearly laid some  
23      boundaries.

24             Criminal prohibitory laws, state courts have  
25      jurisdiction and perhaps they have concurrent

1 jurisdiction with tribal entities. That's the situation  
2 we have here. We have concurrent jurisdiction and the  
3 plaintiff has chosen to file her complaint in state  
4 court.

5 On the other side then you have civil regulatory  
6 laws and in those cases the state courts are stripped of  
7 jurisdiction under Public Law 280. Mr. Bibeau is correct  
8 in his response to state that the Minnesota Supreme Court  
9 has not definitively ruled on whether the Minnesota Human  
10 Rights Act is a criminal prohibitory law or a civil  
11 regulatory law, but I want to be crystal clear that the  
12 fact that the phrase is "criminal prohibitory" versus  
13 "civil regulatory" and does not mean that all civil  
14 matters fall under the civil regulatory system. If it's  
15 a criminal law or if it's a civil prohibitory law, then  
16 state courts continue to have jurisdiction and possibly  
17 concurrent jurisdiction with tribal courts.

18 I think, you know, the arguments that we laid out in  
19 our brief, which I will not rehash in detail, I'm sure  
20 Your Honor has read them, I think lay out the proposition  
21 that if you look at the cases where the Minnesota Supreme  
22 Court has ruled on this question, it seems pretty clear  
23 that a law like the Minnesota Human Rights Act, that  
24 broadly prohibits discrimination, would fall under the  
25 criminal prohibitory -- would fall in that category and

1 the state court would continue to have jurisdiction.

2 You can look at, for example, the cases that were  
3 cited in our briefs and in the defendant's briefs and  
4 when you look at things that are categorized as civil  
5 regulatory, you are looking at things like traffic laws.  
6 So, generally people have the ability to drive a car but  
7 their car driving is regulated in certain instances. Or  
8 things like tax laws where it's regulating conduct that  
9 is permitted generally and just prohibited in certain  
10 instances.

11 That is certainly not the case for the Minnesota  
12 Human Rights Act, which broadly prohibits discrimination.  
13 People are not permitted to discriminate in some  
14 instances and then regulate it as to how and when and  
15 where they may not discriminate and so it clearly falls  
16 on the side of criminal regulatory law.

17 So, we ask that this court reject the defendant's  
18 motion to dismiss. Thank you, Your Honor.

19 THE COURT: Thank you. I just have a few  
20 questions going forward. Ms. Hall, are you familiar with  
21 the Gavle v. Little Six, Inc. case? I know it predates  
22 Stone --

23 MS. HALL: Indeed.

24 THE COURT: So, I'm guessing that's --

25 MS. HALL: Indeed. In fact, the Minnesota



1 Department of Human Rights, which found that it did have  
2 jurisdiction, relied on that case in saying that it had  
3 jurisdiction. I mean, obviously, the difference there is  
4 that you are talking about a tribal entity. The casino  
5 itself was a tribal entity --

6 THE COURT: Right.

7 MS. HALL: But I think the background there is  
8 that if it hadn't been a tribal entity, that some of the  
9 claims that were raised, including civil tort claims and  
10 the like, would have been permitted to go forward in  
11 state court had it not been for the fact that the casino  
12 was a tribal entity.

13 THE COURT: Mr. Bibeau, I have a couple  
14 questions for you then. First of all, do you know, is  
15 there an equivalent tribal law that protects employees  
16 from sexual harassment in tribal court?

17 MR. BIBEAU: I'm not sure I understand the  
18 question. I mean, the reservation itself, or its own  
19 employees, would have that, but the tribal court, I don't  
20 believe they have a sexual discrimination code.

21 THE COURT: Okay.

22 MR. BIBEAU: Right. This is an employment law  
23 case. You can allege whatever you want. They've already  
24 made their allegations.

25 THE COURT: And then my final question, Mr.

1       Bibeau, is if this court and the tribal court has  
2       concurrent jurisdiction, why or why not should I abstain  
3       from exercising jurisdiction here?

4               MR. BIBEAU: Well, one, I'll appeal it. I  
5       mean, I know that's no good answer for you, but that is  
6       what I will do because I see this just like a vehicle.  
7       All it is is a tool that we are using on the reservation  
8       that's been created by other people. The corporation is  
9       a legal fiction. The same thing with that law for civil  
10      forfeiture is a legal fiction because they created that  
11      because they decided there was excessive punishment with  
12      regards to criminal prosecution. So, when they made it  
13      civil and stripped it out, then that was no longer  
14      subject to the jurisdiction of the State of Minnesota --  
15      would involve a tribal member on the reservation. That's  
16      what this is. This is a tool or a vehicle. Now, I  
17      realize it's a tool or a vehicle that's created by other  
18      people, non-Indians, and so forth. I realize we probably  
19      could've incorporated under Delaware law and a bunch of  
20      other things. We're not doing those kinds of things.

21             The idea of what a corporation -- a non-profit  
22      corporation is isn't with Minnesota, it's with the  
23      federal government. It's a 501C tax filing. That's what  
24      a non-profit corporation is. It's registered in  
25      Minnesota because we're inside the boundaries of

1 Minnesota. A lot of tribal members have driver's  
2 licenses from Minnesota. I have a driver's license from  
3 Minnesota. It doesn't mean that my ticket or my car is  
4 going to be subject to state law if it happens on the  
5 reservation. It's the same thing with a gun and other  
6 things. So, really, that's what it needs to be looked  
7 at.

8 I understand that there's some preference to try to  
9 go through the state system and she's right about what  
10 the Minnesota Human Rights Department tried to do. They  
11 don't understand their lack of jurisdiction. There is a  
12 case that I would refer to, and I told them to think  
13 about it, it's called Gavle II. After Gavle, it was  
14 reopened for a different party in that matter and it  
15 happened after the Stone decision in 1997 and Judge  
16 Russell Anderson was also still on the court and he said  
17 had this matter been brought up with the other ones  
18 afterwards, we probably would've found for no  
19 jurisdiction for everything. So, they understood that  
20 the timing of that Gavle case and the Stone decision were  
21 so close in time, that they really misunderstood what  
22 they were doing with that first case and you see that  
23 commentary in that second case. I don't remember the  
24 name of it, but I submitted to Human Rights and I can  
25 certainly file it here.

1 THE COURT: Do you have a cite?

2 MR. BIBEAU: Right, I don't have it with me.  
3 But that's what I mean. That's why I refer to it as  
4 'Gavle II' because everybody just says, "Gavle, Gavle,  
5 Gavle." Well, there's another case called Gavle.

6 THE COURT: Okay, I'd appreciate it if you  
7 could submit that after the hearing.

8 MR. BIBEAU: No, I understand. I was surprised  
9 when I found it too because -- but it was Russell  
10 Anderson so I understood why.

11 THE COURT: And so in what way would this  
12 Court, exercising jurisdiction, infringe upon the tribal  
13 court?

14 MR. BIBEAU: What you're really doing is you're  
15 infringing on every single tribal member who has a right  
16 to bring this to tribal court under our treaties. These  
17 tribal courts and these other legal mechanisms, we have  
18 the self-inherent right to have our matters heard in  
19 tribal court and to not be subject to state jurisdiction  
20 in a lot of circumstances, except for like criminal and  
21 prohibitory with Public Law 280. We are encouraged to  
22 bring our own forum up and raise it up so that we have  
23 those kinds of things that you might look for in terms of  
24 codes or other decisions and things like that.

25 We would be oppressing the development of the tribal

1 court and in other places. This is what is expected out  
2 of tribal court is that it also will serve in these  
3 areas.

4 We've had a case, and this is just a little bit of a  
5 tangential case, where two people came up from St. Cloud  
6 who were not Indians to get divorced in White Earth  
7 Tribal Court. I got called on it. I live over on Leach  
8 Lake Reservation. I asked them, "Was there any property  
9 involved?" and they said, "yeah". I said, "Well, did it  
10 say where it was?" and they said, "it was in Sherburne  
11 County". I said, "Are they addressing the property?" and  
12 they said, "no". I said, "Are there any kids involved?"  
13 and they said, "yes". I said, "Where's that being held?"  
14 and they said, "in Stearns County". I said "Is that part  
15 of the process?" and they said, "no". All they're doing  
16 is getting divorced. It's a status thing. That's what  
17 is hard for people to understand when we're at a status  
18 point and that's what this is.

19 Yes, we have a car. Yes, we have a corporation.  
20 They're not illegal to possess and it doesn't mean the  
21 state can use its laws to try to take it away from us.  
22 That's really what it comes down to.

23 THE COURT: Just for clarification then too,  
24 finally, it is alleged that some of the acts -- some of  
25 the acts that are alleged are alleged to have occurred

1 outside of the boundaries, correct?

2 MR. BIBEAU: It's possible. I -- it was so  
3 hard for me to read through the allegations to even try  
4 to acknowledge some of them that I lost track of what was  
5 being said, but I'm also the executive director of the  
6 1855 Treaty Authority and I believe whatever other  
7 actions there are were probably within that territory as  
8 well. We have the right to travel and other things. We  
9 don't exert our jurisdiction typically, but we have a  
10 forum to resolve those differences.

11 Right now, this individual is attempting to sue  
12 Indians for on-reservation conduct and doesn't want to go  
13 to the reservation where the Indians live and challenge.  
14 They want to do it off reservation to try to escape  
15 whatever else there is.

16 These laws -- when she brought up Minnesota Human  
17 Rights, there was no Minnesota Human Rights in 1953 when  
18 they adopted Public Law 280. That's looking at this  
19 puzzle backwards. Congress doesn't say, "hey, Minnesota  
20 Human Rights, your law doesn't apply." We would've seen  
21 something in the state decisions by now. It's been 20  
22 years since the Stone decision. There's nothing that  
23 says it's criminal prohibitory. You don't even see any  
24 decision that suggest it should be taken off the  
25 reservation. I don't know what this Rasmussen v. Fish

1       Co. is but I'm willing to bet it's not Indians.

2               MS. HALL: Your Honor?

3               THE COURT: Yes, would you like to respond to  
4 any of the questions I asked him or --

5               MS. HALL: Absolutely. Thank you, Your Honor.  
6 I do want to point to the allegations in the complaint,  
7 many of which occurred off reservation. So, the sexually  
8 harassing comments that are listed in the complaint, and  
9 I'm just -- I have the complaint in front of me so that I  
10 can, you know, perhaps cite to exact paragraph numbers  
11 here, but it is alleged that comments were made --  
12 sexually harassing comments were made by Mr. Dahl to Ms.  
13 Campbell in paragraph 39 when they were traveling to  
14 British Columbia, Canada, for a funding retreat.

15               It is also alleged that subsequently sexually  
16 harassing comments were made again by Mr. Dahl to Ms.  
17 Campbell when the parties were in Denver, Colorado,  
18 paragraph 49 of the complaint.

19               Then there were also conversations that Ms. Campbell  
20 had with Ms. LaDuke to make complaints -- the key  
21 conversation, the conversation where Ms. Campbell and two  
22 other -- two native women who had heard allegations of  
23 sexual assault of a minor, met with Ms. LaDuke and that  
24 occurred in St. Paul.

25               Ms. Campbell worked onsite at the reservation and

1 she worked remotely and some of the conversations that  
2 she received over Facebook and over text message and the  
3 like about all of this occurred when she was in St. Paul.

4 So, in fact, many of the allegations of harassment  
5 and retaliation occurred outside the boundaries of White  
6 Earth.

7 THE COURT: Any other responses you wanted to  
8 make regarding my questions to Mr. Bibeau at all?

9 MS. HALL: I have nothing further, Your Honor.  
10 Thank you.

11 THE COURT: Anything further then, Mr. Bibeau?

12 MR. BIBEAU: I'm surprised to mention British  
13 Colombia and Denver, they're both outside the  
14 jurisdiction of Minnesota in some senses. But the idea  
15 of complaining to Winona LaDuke when St. Paul isn't the  
16 conduct of the actual assaultive behavior or whatever  
17 else is being alleged, that isn't the conduct. That's  
18 talking to a person trying to bring the issue up. Winona  
19 LaDuke is not named here.

20 THE COURT: All right, thank you both very  
21 much.

22 MR. BIBEAU: Thank you.

23 THE COURT: I will take this under  
24 consideration. Can you get me the cite for that case  
25 within a week?



1 MR. BIBEAU: I can even email you the whole  
2 piece --

3 THE COURT: Perfect. Ms. Muench, would you  
4 want to give them your email address so that you can --  
5 you can send it to my law clerk and make sure that  
6 everybody gets it.

7 MR. BIBEAU: Sure.

8 THE COURT: Thank you very much. I'll take it  
9 under advisement and that'll conclude the hearing.

10 MS. HALL: Thank you.

11 MR. BIBEAU: Thank you, Your Honor.

12 *(Proceedings concluded.)*

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1 STATE OF MINNESOTA )  
2 )  
3 COUNTY OF BECKER )

4 I, Jennifer L. Splonskowski, do hereby certify that  
5 I am a Certified Electronic Court Reporter in the Seventh  
6 Judicial District of the State of Minnesota; that as such I  
7 did electronically record the proceedings of the above-  
8 entitled action; that I did thereafter transcribe into  
9 typewriting the foregoing transcript from the recordings taken  
10 in Becker County, Minnesota on May 8, 2019; and that the  
11 foregoing transcript consisting of 17 pages, constitutes a  
12 true and accurate record of these proceedings to the best of  
13 my ability.

14 Dated: May 14, 2019

15  
16 /s/ Jennifer L. Splonskowski  
17 Jennifer L. Splonskowski  
18 Certified Electronic Court Reporter  
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